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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/710,864	08/09/2004	Gerard James Hayes	U04.0063.090	7977
24239	7590	02/28/2006	EXAMINER	
MOORE & VAN ALLEN PLLC P.O. BOX 13706 Research Triangle Park, NC 27709			XU, LING X	
			ART UNIT	PAPER NUMBER
			1775	
DATE MAILED: 02/28/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/710,864

Applicant(s)

HAYES, GERARD JAMES

Examiner

Ling X. Xu

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 09 August 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 August 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
- Paper No(s)/Mail Date 7/11/2005.

- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Drawings***

1. Figures 1-3 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). Corrected drawings in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, the claimed subject matter appears to be the impedance layer comprising a metallic layer. However, the claim also recites the position of the metallic layer coupled to the mobile phone such that it is positioned between the source of electro-magnetic waves and a user's hearing aid. It is unclear if applicant's intent is to claim the structure of the impedance layer or the structure of the mobile phone. The following examination is based on that the

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claimed subject matter is the impedance layer, which does not include the structure of the mobile phone.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Berger et al (US 2003/0040345).

With respect to claim 1, Berger discloses a magnetically absorptive material layer comprising a ferrite or ferrite dispersed in ceramic or rubber medium (page 3, [0034]-[0036]). Since ferrites are metals, the magnetically absorptive material layer can be considered to have a metallic layer.

The fact that the impedance layer is use with a mobile phone and is “coupled to the mobile phone such that it is positioned between the source of electro-magnetic waves and a user’s hearing aid” does not provide a patentable distinction on the structure of the claimed impedance layer because the impedance layer structure does not include the structure of the mobile phone. The preamble recitation of impedance layer “for use with a mobile phone” and the metallic layer’s location in the mobile phone places no positive limitations on the claimed impedance layer, it merely indicates the intended use of the impedance layer.

With respect to claims 2-5, Berger disclosed that magnetically absorptive material is located within the telephone cell, which is a hard plastic shell (page 4, [0048-0049]). The magnetically absorptive material layer can be sandwiched between layers of materials such as silicon rubber or hard plastic (page 4, [0049]). Both silicon rubber and hard plastic are dielectric substrates layers. Accordingly, the magnetically absorptive material layer is buried between a pair of dielectric substrates and is coupled to the inner surface of the top substrate and outer surface of the bottom substrate.

With respect to claims 6, Berger discloses a magnetically absorptive material layer comprising ferrite dispersed in ceramic or rubber medium (page 3, [0034]-[0036]). The magnetically absorptive material layer is considered to be the resistive layer because of the ceramic or rubber medium.

The fact that the impedance layer is use with a mobile phone and is “coupled to the mobile phone such that it is positioned between the source of electro-magnetic waves and a user’s hearing aid” does not provide a patentable distinction on the structure of the claimed impedance layer because the impedance layer structure does not include the structure of the mobile phone. The preamble recitation of impedance layer “for use with a mobile phone” and the metallic layer’s location in the mobile phone places no positive limitations on the claimed impedance layer, it merely indicates the intended use of the impedance layer.

With respect to claims 7-10, Berger disclosed that magnetically absorptive material is located within the telephone cell, which is a hard plastic shell (page 4, [0048-0049]). The magnetically absorptive material layer can be sandwiched between layers of materials such as silicon rubber or hard plastic (page 4, [0049]). Both silicon rubber and hard plastic are dielectric

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substrates layers. Accordingly, the magnetically absorptive material layer is buried between a pair of dielectric substrates and is coupled to the inner surface of the top substrate and outer surface of the bottom substrate.

With respect to claim 11, Berger disclosed that magnetically absorptive material is located within the telephone cell, which is a hard plastic shell (page 4, [0048-0049]). The magnetically absorptive material layer can be sandwiched between layers of materials such as silicon rubber or hard plastic (page 4, [0049]). Since the magnetically absorptive material layer comprises metal layer and the silicon rubber layer is a resistive layer, Berger discloses the same structure with a metallic layer and a resistive layer coupled with the metallic layer as claimed.

The fact that the impedance layer is use with a mobile phone and is “coupled to the mobile phone such that it is positioned between the source of electro-magnetic waves and a user’s hearing aid” does not provide a patentable distinction on the structure of the claimed impedance layer because the impedance layer structure does not include the structure of the mobile phone. The preamble recitation of impedance layer “for use with a mobile phone” and the metallic layer’s location in the mobile phone places no positive limitations on the claimed impedance layer, it merely indicates the intended use of the impedance layer.

Since Berger discloses the magnetically absorptive material layer has the same structure as claimed, the same magnetically absorptive material layer would also have the same functions and properties as recited in claims 1, 6 and 11 such as attenuating the electro-magnetic waves and reducing the effect of the electro-magnetic waves.

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4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ling X. Xu whose telephone number is 571-272-1546. The examiner can normally be reached on 8:00 - 4:30 Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Deborah D. Jones can be reached on 571-272-1535. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Ling X. Xu  
Primary Examiner  
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